APPEAL NO. 041613
FILED AUGUST 13, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on May 21, 2004, with the record closing on June 2, 2004. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, nor at any other time, and that the respondent (carrier) is not relieved from liability under Section 409.002 because of the claimant's failure to timely notify his employer pursuant to Section 409.001. The claimant appealed on sufficiency of the evidence grounds. Additionally, the claimant asserts procedural error and requests that the Appeals Panel consider evidence not presented at the CCH. The carrier responded, objecting to the consideration of any evidence not presented at the CCH, and otherwise urging affirmance. The hearing officer's determination regarding timely notice has not been appealed and has become final. Section 410.169.

DECISION

Affirmed.

On appeal, the claimant requests that we consider evidence not presented at the CCH. Our review of the case is limited to the record developed at the CCH and we will not normally consider documents or evidence submitted for the first time on appeal. *See* Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ) for the standard which might require a remand. In that the evidence the claimant desires us to consider all appear to have been available at the time of the CCH we do not find a remand warranted or appropriate.

The claimant additionally asserts that he was not given a full opportunity to develop his case because he was assisted by a substitute ombudsman, and he appears to assert that the carrier inappropriately submitted medical evidence after the close of the CCH. At the commencement of the CCH, the claimant was asked if he had been able to meet with the ombudsman for at least 15 minutes. The claimant stated that he had, and that he was prepared to go forward. At no time during the CCH did the claimant indicate that he was unhappy with the assistance he received from the ombudsman. Our review of the record reveals that the claimant was given ample opportunity to present his case to the hearing officer. We likewise find no support for the claimant's contention that the carrier may have submitted additional medical records after the close of the CCH. At the commencement of the CCH, the carrier requested that the claimant sign a medical release. The claimant agreed to do so and also agreed to leave the record open until June 2, 2004, with the condition that any records the carrier received would be exchanged with him and that he be given the opportunity to respond. Nothing in the record indicates that the carrier submitted any additional evidence after the close of the CCH. As such, we perceive no error.

The claimant had the burden to prove that he sustained a compensable injury. There is conflicting evidence in this case. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). The finder of fact may believe that the claimant has an injury, but disbelieve that the injury occurred at work as claimed. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). A fact finder is not bound by medical evidence where the credibility of that evidence is manifestly dependent upon the credibility of the information imparted to the doctor by the claimant. Rowland v. Standard Fire Ins. Co., 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). An appellate body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. Our review of the record reveals that the hearing officer's injury determination is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Thus, no sound basis exists for us to disturb that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **ACE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063.

_____
Daniel R. Barry
Appeals Judge

CONCUR:

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Elaine M. Chaney
Appeals Judge

_____
Thomas A. Knapp
Appeals Judge